

MEMORANDUM OF UNDERSTANDING
(Old Town Parking Garage Project - Phase 1)

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) made as of this ____ day of _____, 2004, by and between the City of Takoma Park, Maryland (“City”), a municipal corporation, and Urciolo Properties, LLC (“Urciolo”), a Maryland limited liability company.

RECITALS

WHEREAS, Urciolo is the owner in fee simple of that certain real property with improvements known as the Takoma Metro Shopping Center, described as Lots 49, Part of 50, 51, 52 and 9, Block A, “Gilbert and Wood” subdivision, located on Laurel and Eastern Avenues, in the City of Takoma Park, Maryland; and

WHEREAS, Urciolo desires to construct a new commercial building fronting on Laurel Avenue and an approximately 11,000 square foot multi-level parking structure (the “Old Town Parking Garage”) located on Eastern Avenue (the “lower lot”) and to expand and reconfigure the existing Takoma Metro Shopping Center surface parking lot (the “upper lot”); and

WHEREAS, there is a need for additional parking to serve Old Town Takoma Park businesses and to facilitate the economic development and marketing of the Old Town Takoma Park business area; and

WHEREAS, upon completion, the Old Town Parking Garage will be available for use by the public with parking spaces available on both a short-term and long-term basis; and

WHEREAS, the City desires to explore the joint development of the Old Town Parking Garage with Urciolo and has applied for and received Community Legacy Program funds from the State of Maryland, Department of Housing and Community Development to plan the Old Town Parking Garage project; and

WHEREAS, the City and Urciolo desire to set forth the terms of their agreement pertaining to community outreach, design, and engineering services for development of the Old Town Parking Garage.

NOW, THEREFORE, in consideration of the foregoing recitals, mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Urciolo agree as follows:

1. **Project Design and Development.** This MOU provides for engineering and design work for the Old Town Parking Garage and for community outreach concerning the proposed project.
2. **Financial Responsibilities for Project Design and Development.**
 - a. **City Responsibility.** The City has received grant funds from the Community Legacy Program to pay for engineering services for the development of the Old Town Parking

Garage. By Ordinance No. 2003-31, adopted on August 4, 2003, the City Council approved execution of a contract with Maddox Engineering Services, Inc. (“Maddox”), in an amount not to exceed the \$38,500.00 of Community Legacy Grant Funds, for engineering services required for the development of the Old Town Parking Garage. The engineering services to be provided by Maddox consist of (1) augmentation of the existing topographic survey of the site (this survey work has been completed), (2) preparation of a site plan, (3) structural engineering work (*i.e.*, plans as required for permit approval on the retaining walls and structural elements for the ramp from the parking garage to Eastern Avenue), (4) preparation of natural resource inventory, (5) development of stormwater concept and management plan, and (6) preparation of soil erosion and sediment control plans. The City agrees to expend the remaining portion of the \$38,500.00 Community Legacy Grant Funds, in accordance with the authorized contract with Maddox, for engineering services for the Old Town Parking Garage, as set forth in this paragraph.

b. Urciolo Responsibility. Except for the costs to be paid by the City pursuant to paragraph 2.a. of this MOU, all costs for the development of design drawings, plans, applications, and submissions required in order to obtain approval from the Historic Preservation Commission and other applicable governmental agencies and bodies for the construction of the Old Town Parking Garage will be paid by Urciolo.¹ Urciolo has retained Spurlock Wnuk AIA as architects for the Old Town Parking Garage and for his commercial building development project.

3. Community Outreach. The City and Urciolo agree to hold a series of community meetings in order to seek input on the design features of the proposed Old Town Parking Garage such as height, facade materials, and landscaping. Conceptual drawings for the parking garage will be prepared by Urciolo and made available for examination at the community meetings. At the meetings, Urciolo also will present his plans for the proposed commercial building and seek community feedback on those plans. The community meetings will include the following groups:

- Old Takoma Business Association (OTBA)
- Historic Takoma, Inc.
- Westmoreland Area Community Association (WACO)
- Facade Advisory Board
- Takoma Park Farmer’s Market
- Old Takoma Residents Association (OTRA).

In addition, there will be a community-wide forum to seek input on the proposed development plans from the entire Takoma Park community. The dates and format of the meetings will be determined by the parties in consultation with the appropriate community group(s).

4. Final Design Concept: Review by the City Council and Submission to Historic Preservation Commission. Based on the input from the community outreach meetings, a final design

¹ Urciolo also intends to construct a new commercial building and to expand and reconfigure the upper surface parking lot. These projects are not part of this MOU and are being developed solely by Urciolo. All costs for the proposed commercial building and expansion and reconfiguration of the upper lot will be paid by Urciolo.

concept for the Old Town Parking Garage will be prepared and presented to the City Council for review. This Council review will precede submission of the design drawings and development plan to the Montgomery County Historic Preservation Commission ("HPC") for review and approval. Urciolo will be solely responsible for obtaining HPC and all other required approvals and consents for construction of the Old Town Parking Garage. City staff will assist with the approval and permit process, as the parties deem appropriate and necessary.

5. Timetable. Promptly following the execution of this MOU for Phase 1 of the Old Town Parking Garage Project, the City and Urciolo will develop a timetable for the project design and development tasks and community outreach meetings set forth in this MOU. The parties anticipate that all tasks and meetings provided for in this MOU will be completed within approximately 60 days after the date of this MOU. Unless it is extended by a written agreement of the parties, this MOU will end on July 1, 2004.

6. Phase 2 - Construction and Operation of the Proposed Old Town Parking Garage.

a. Continuation of the joint development of the Old Town Parking Garage project beyond Phase 1 (*i.e.*, through the completion of the concept drawing stage as set forth in this MOU) will require a further written agreement between the parties. Until and unless such further agreement is signed, neither party will be bound and neither party will have any further liability for the Old Town Parking Garage project to the other.

b. The following sets forth the preliminary basis for continuation of the joint development of the Old Town Parking Garage project beyond Phase 1, provided that the parties, in their sole and absolute discretion, determine that the project is financially feasible and that construction of the parking garage is in their best interests and in the best interests of the citizens of the City.

(1) Urciolo will be responsible for securing all required approvals and permits for the construction of the Old Town Parking Garage.

(2) Urciolo will pay all costs of construction of the Old Town Parking Garage, subject to repayment of such costs by the City, at no interest, from the revenue generated by the parking garage.

(3) The City has applied for and obtained a \$300,000.00 Community Legacy Program award for construction of the Old Town Parking Garage. This \$300,00.00 Community Legacy Program award must be repaid by the City to the State of Maryland, over a period of years, from revenues generated by the funded project. These Community Legacy Funds will be used for the acquisition and installation of parking meters and equipment for the parking garage and for other approved costs in accordance with the requirements of the Community Legacy Program.

(4) Upon completion of the Old Town Parking Garage, the garage will be leased by Urciolo to the City for use as a public parking facility. Parking revenues from the Old Town Parking Garage, less operating and maintenance costs, will be used, first, to repay the

Community Legacy Program award and, second, to reimburse Urciolo for agreed-upon actual costs of constructing the Old Town Parking Garage. Repayment of the Community Legacy award and the Old Town Parking Garage construction costs will be made solely from the net parking revenues and parking fines generated by the parking garage and the upper lot and no other City funds will be used to fund such repayment obligations.

(5) Upon repayment of the Community Legacy award to the State of Maryland and repayment of the construction costs to Urciolo, then Urciolo will either lease the parking garage and the land under the Old Town Parking Garage to the City on a long-term basis, with the lease terms and lease payment to be determined, or will transfer ownership of the Old Town Parking Garage to the City and the City will purchase the land under the parking garage with the purchase price and terms to be determined.

7. General Provisions.

a. Default. If either party fails to comply with any provision of this MOU, then the party will be in default of this MOU. In the event of a default, the party claiming default must serve a notice of default upon the other in accordance with the Notice provisions of this MOU. The defaulting party must cure the default within the time set forth in the notice or within one week of such notice if no time is stated in the notice. If the defaulting party does not comply with a notice of default within the stated time limit, then the party claiming default may serve a notice of termination upon the defaulting party, specifying the date and time of termination of this MOU.

b. Indemnification. Regarding any matter relating to this MOU, each party shall indemnify and save the other harmless against and from, and shall reimburse the other for, all liabilities, obligations, damages, fines, penalties, claims, demands, judgments, and expenses, not including attorneys' fees, which may be imposed or incurred or paid by or asserted against the other by reason of or arising out of any negligent, tortious, or illegal act on the part of it or its agents, contractors, or employees.

c. Notices. All notices, requests, approvals, and consents of any kind made pursuant to this MOU shall be in writing. Any such communication, unless otherwise specified, will be deemed effective as of the date it is personally delivered or as of the date it is faxed and mailed, postage prepaid, addressed as follows (or to such other person or address as a party may direct by written notice to the other):

To the City: Sara Anne Daines
Director, Economic and Community Development
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912
Phone: (301) 891-7224; Fax: (301) 270-4568
E-Mail: SaraD@takomagov.org

With a copy to:
Linda S. Perlman, Asst. City Attorney

Silber & Perlman, P.A.
7000 Carroll Avenue, Suite 200
Takoma Park, MD 20912-4437
Phone: (301) 891-2200; Fax: (301) 891-2206
E-Mail: Perlman@SP-law.com

To Urciolo: John R. Urciolo
Urciolo Properties, LLC
6935 Laurel Avenue, Suite 100
Takoma Park, MD 20912-4413
Phone: (301) 270-4442; Fax: (301) 270-6487
E-Mail: jurcy@erols.com

d. Miscellaneous. This MOU contains the final and entire understanding of the parties with respect to the subject matter of this MOU. There are no representations, terms, conditions, statement, warranties, promises or understandings other than those expressly set forth or mentioned herein. This MOU may not be amended, modified or changed in any way except by a writing signed by all parties. This MOU and rights or obligations hereunder is not assignable by either party without the prior written consent of the other party and any attempted assignment without such prior written consent is void. This MOU is binding upon the parties and their respective successors, personal representatives, and assigns. This MOU will be construed, interpreted, and enforced in accordance with the laws of the State of Maryland.

IN WITNESS WHEREOF, the parties have signed this Memorandum of Understanding, under seal, as of the date first above written.

CITY OF TAKOMA PARK, MARYLAND

Date: _____ By: _____ (SEAL)
Richard M. Finn, City Manager

Approved for legal form and sufficiency:

Linda S. Perlman, Assistant City Attorney

URCIOLO PROPERTIES, LLC

Date: _____ By: _____ (SEAL)
John R. Urciolo, Member

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